IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No.728 of 2001.
Date of decision: 23.07.2007

Varinder Singh & Others **….Petitioners**

Versus

The Hon'ble High Court & Others **….Respondents**

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The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Petitioners: **Mr.Tek Chand Sharma, Advocate.**

For Respondent No.1: **Mr.Atul Jhingan, Advocate.**

For Respondents 2 to 6: **Mr.Bhupender Gupta, Senior Advocate with Mr.Neeraj Gupta, Advocate.**

Dev Darshan Sud,J.

This writ petition has been filed by the petitioners who claim that they are the sole legal representatives of late Shri Dharam Chand, who was serving as a Court Jamadar (Usher) of this Court with a further prayer that all the benefits due to him on his death including pension etc. be granted in their favour. The petitioners alleged that Bimla, petitioner No.3, was married to the deceased Dharam Chand, who was an employee of this Court, about 24-25 years ago. They lived as husband and wife in Shimla till 25.6.1996. Shri Dharam Chand died on 9.5.2000 while in service.

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement***?

Petitioners No.1 and 2 alleged that they were born out of this wedlock and are entitled to the benefits as claimed. It is their case that respondents No.2 to 5 are not entitled to any benefits due to the legal representatives of the deceased.

The writ petition has been resisted by the respondents on a number of grounds. The High Court in its reply has alleged that according to Rule 53 of the CCS (Pension) Rules, 1972, for the purposes of payment of gratuity, death gratuity, nomination form has been filled by the deceased nominating Smt.Rumla Devi as his wife to be nominee and Smt.Mamta Devi his daughter-in-law in case of death of Smt.Rumla Devi. This form is duly witnessed by two employees of this Court. The legal heir certificate has been placed on the record showing the respondents Smt.Hima Devi, Sh.Bhuri Singh, Smt.Ganga Devi, Kumari Shanta Devi, Smt.Rumla Devi as legal representatives of the deceased.

Learned counsel appearing for the petitioners submits that despite this nomination, the petitioners would be entitled to the benefits due on the death of the deceased Dharam Chand. He has placed reliance on ***Rameshwari Devi vs. State of Bihar and Others AIR 2000 SC 735*** and relies on the dictum of the Court holding therein that:

> "**15**. RAMESHWARI Devi has raised two principal objections : (1) marriage between Yogmaya Devi and Narain Lal has not been proved, meaning thereby that

there is no witness to the actual performance of the marriage in accordance with the religious ceremonies required for a valid Hindu marriage and (2) without a civil Court having pronounced upon the marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights, it cannot be held that the children of Yogmaya Devi with her marriage with Narain Lal would be legitimate under Section 16 of the Hindu Marriage Act. First objection we have discussed above and there is nothing said by Rameshwari Devi to rebut the presumption in favour of marriage duly performed between Yogmaya Devi and Narain Lal. On the second objection, it is correct that no civil Court has pronounced if there was a marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights. That would, however, not debar the State Government from making an inquiry about the existence of such a marriage and act on that in order to grant pensionary and other benefits to the children of Yogmaya Devi. On this aspect we have already adverted to above. After the death of Narain Lal, inquiry was made by the State Government as to which of the wives of Narain Lal was his legal wife. This was on the basis of claims filed by Rameshwari Devi. Inquiry was quite detailed one and there are in fact two witnesses examined during the course of inquiry being (1) Sant Prasad Sharma,

> teacher, DAV High School, Danapur and (2) Sri Basukinath Sharma, Shahpur Maner who testified to the marriage between Yogmaya Devi and Narain Lal having witnessed the same. That both Narain Lal and Yogmaya Devi were living as husband and wife and four sons were born to Yogmaya Devi from this wedlock has also been testified during the course of inquiry by Chandra Shekhar Singh, Rtd. District Judge, Bhagalpur, Smt. (Dr.) Arun Prasad, Sheohar, Smt. S. N. Sinha, w/o Sri S. N. Sinha. ADM and others. Other documentary evidence were also collected which showed Yogmaya Devi and Narain Lal were living as husband and wife. Further, the sons of the marriage between Yogmaya Devi and Narain Lal were shown in records as sons of Narain Lal".

He further submits that this Court in ***Smt.Premi Devi*** *vs.* ***Director of Directorate General Boarder and others, CWP No.1143 of 2004, decided on 18.12.2006,*** reported in ***2007 Volume 1 Latest HLJ 2007 (HP) 49,*** it was held that the nominee is the trustee for the rightful claimants and is not entitled to appropriate the entire amount. He has referred to the case of ***Rampyari Bai*** *vs.* ***Municipal Corporation and another 1987(Supp) SCC 253 and Rameshwari Devi*** *vs.* ***State of Bihar and Others AIR 2000 SC 735,*** both of which have been considered in this judgment. There is no dispute with the proposition that a nominee is the trustee of

the funds entrusted to his care and gives a valid discharge to the employer but it does not under any circumstances, control the succession to the estate of the deceased. Such nomination also does not determine the legitimacy to the claim of succession.

The precedent cited is distinguishable because from the pleadings and the documents on the record I find that not only the legitimacy of the first marriage is questioned, but a determination regarding the question of divorce from the first wife in terms of the relevant law is required to be ascertained. There are documents on record to which reference has been made by the respondents to show that the case involves determination of disputed questions of fact requiring detailed evidence.

In the facts and circumstances, I hold that the writ proceedings are not the proper remedy for determination of such issues. The petitioners are free to institute a Civil Suit for determination of their rights.

The writ petition is accordingly disposed of. It is held:

(a) That the petitioners would be at liberty to file a Civil Suit in a Court of competent jurisdiction for determination of their rights.

(b) In case such suit is filed, limitation will not be pleaded as a bar for determination of their rights by the

respondents as this writ petition has been pending in this Court since 2001.

(c) The monetary benefits received by the respondent No.1 on the basis of the nomination will be held by her as trustee till the determination of such matter by the Civil Court and on final determination, will be payable to the party who establishes such rights.

(d) No expression has been made by this Court on the veracity or legality of the claim of any party as alleged in the writ petition. The Civil Court will proceed independently on its own totally un-influenced by any observation having been made in this petition.

This writ petition is disposed of. There shall be no order as to costs.

July 23, 2007. **(Dev Darshan Sud)**
(aks) **Judge.**